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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/266,674 03/11/99 HARPER

D P-8609

MEDTRONIC INC
7000 CENTRAL AVENUE N E
MINNEAPOLIS MN 55432

QM12/1228

EXAMINER

SIRMONS, K

ART UNIT

PAPER NUMBER

3763

DATE MAILED:

12/28/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

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Office Action Summary

Application No.

09/266,674

Applicant(s)

Derek Jonathan Harper et al.

Examiner

Kevin C. Sirmans

Group Art Unit

3763



☒ Responsive to communication(s) filed on Nov 1, 1999

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

☒ Claim(s) 1-58 is/are pending in the applicat

Of the above, claim(s) _____ is/are withdrawn from consideration

☒ Claim(s) 23-58 is/are allowed.

☒ Claim(s) 1-22 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s) _____

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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DETAILED ACTION

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “a volume reservoir” must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.
2. The drawings are objected to under 37 CFR 1.83(a) because they fail to show “the filter being flush with the outer surface of the volume reservoir as described in the claims. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Correction is required.
3. The disclosure is objected to because of the following informalities: Vertical should be horizontal (page 8, third paragraph). Furthermore ((32), line, 18 should be(48)).

Appropriate correction is required.

4. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: “a rigid volume reservoir” appears to be missing from the specification.

Claim Rejections - 35 USC § 112

5. Claims 1-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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It is unclear whether the drip chamber is the same (one piece) as the volume reservoir, or is it a separate individual part of the drip chamber. Furthermore, it is unclear if the filter is flush with the outer surface of the volume reservoir from the inside of the volume reservoir, or from the outside of the volume reservoir. Basically, it is unclear how the filter is flush with the outer surface of the volume reservoir.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-6, 9-18, 21-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Kashmer et al U.S. Pat. No. 4,465,485.

Kashmer et al discloses a drip chamber comprising: a volume reservoir having an outer surface and a vent in fluid communication with the reservoir, the vent having a filter made of a porous material wherein the pore size of the filter ranges from greater than .45 um to about 5.0 um (fig. 1), the filter being flush with the outer surface of the volume reservoir (fig. 4); wherein the porous mater is expanded (ePTFE) (40, 60); wherein the porous material is a hydrophobic material (40, 60);

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wherein the filter is flush with the outer surface of the volume reservoir (40, 60); wherein the vent is integral with the outer surface of the volume reservoir (40, 60); and wherein the volume reservoir is ridged (14).

Allowable Subject Matter

8. Claims 23-58 are allowed.
9. Claims 7, 8, 19, and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
10. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record does not suggest or render obvious the combination of elements: a drip chamber comprising; a fluid reservoir, with an outer manifold in fluid communication with the fluid reservoir, the outlet manifold having an outlet; an inlet manifold in fluid communication with the reservoir, the vent having a filter made of a porous material and being flush with the outer surface of the volume reservoir; wherein the pore size of the filter ranges from greater than .45 um to about 5.0 um; a drainage bag; and a stopcock connecting the drip chamber to drainage bag through the outlet.

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Response to Arguments

11. Applicant's arguments with respect to claims 1-22 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

13. Any inquiry concerning this communication or earlier communication from the examiner should be directed to Kevin C. Sirmons whose telephone number is (703)306-5410.

The examiner can normally be reached on Monday - Thursday from 6:30 am to 4:00 pm. The examiner can also be reached on alternate Fridays.

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If attempt to reach the examiner by telephone are unsuccessful, the examiner's supervisor,
Wynn Wood Coggins, can be reached on (703) 308-1344.


Kevin C. Sirmons

Patent Examiner

12/18/99


WYNN WOOD COGGINS
SUPERVISORY PATENT EXAMINER